APPENDIX A.

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division One.

James O. Reimel, Director of the Department of Alcoholic Beverage Control of the State of California, Petitioner and Appellant, vs. Leverette D. House, Leon M. Cooper, Roger P. Garety, as Chairman and Members of the Alcoholic Beverage Control Appeals Board, Defendants and Respondents, and Westside Liquor Company, Inc., doing business as Hazan's Wine & Spirits, Real Party in Interest and Respondents. 2d Civ. No. 30427.

Filed Feb. 27, 1968.

APPEAL from a judgment of the Superior Court of Los Angeles County. Harold F. Collins, Judge. Reversed with directions.

Thomas C. Lynch, Attorney General and Lynn Henry Johnson, Deputy Attorney General, counsel for Appellant.

Charles P. Just, Chief Counsel and Leo K. Gallant, Senior Counsel, counsel for Respondents.

Harold Easton and Alan F. Kane, counsel for Real Party in Interest.

This is an appeal by the Department of Alcoholic Beverage Control of the State of California (hereinafter sometimes referred to as the Department) through its director, James O. Reimel, from a judgment of the trial court denying a petition for a writ of mandate (and discharging an alternative writ of mandate), which would have required the Alcoholic Beverage Control

Appeals Board (hereinafter sometimes referred to as the Board), to affirm the decision made by the Department.

Westside Liquor Company (hereinafter sometimes referred to as Westside), doing business as Hazan's Wines and Spirits, holds an off-sale general liquor license issued by the Department. On December 13, 1963, the Department filed an accusation against Westside in which it was alleged in separate counts that on each of three occasions (November 15, 18, and 22, 1963, respectively) Westside violated the Fair Trade Laws (Bus. & Prof. Code, § 24755) by making retail sales of alcoholic beverages at prices below the effective minimum retail prices. A hearing on these charges was conducted before a hearing officer from the Office of Administrative Procedure, who issued a proposed decision finding the accusations true. He recommended license revocation upon conditions permitting Westside to transfer the license to a third party, subject to 60 days suspension. The Department adopted the findings of the hearing officer, but modified the penalty and issued its decision revoking Westside's license on each count severally and separately.

Westside appealed to the Board, which rejected the grounds proposed by Westside for reversal of the Department's decision, but on its own motion undertook to consider the issue, not theretofore raised of whether the minimum retail prices which the Department sought to enforce had been published in accordance with the publication provisions of Business and Professions Code section 24755(b). On this issue, the Board determined the case adversely to the Department, holding that the record did not contain substantial evidence

of the publication of these specific minimum prices in compliance with the controlling statute. The Board founded its decision on a determination that the Department's rule 99(k) (Tit. IV, Cal. Adm. Code), conflicted with the provisions of the statute insofar as it permitted publication of minimum prices in a trade journal in general circulation among liquor licensees in the trading area affected to satisfy the publication requirement, and was therefore invalid.

Following the Board's decision, the Department filed the instant petition for writ of mandate in the superior court; the Board answered and Westside intervened. The court affirmed the Board's action, and the Department appeals the court's denial of the requested writ.

A résumé of some of the facts, as disclosed by the record, shows that sales in violation of the statute were made by a long-time employee of Westside, Claire Feldman. She was familiar with Patterson's (a trade journal) and she made written comparison for the Department investigators, who posed as "special customers" from whom volume purchases might be anticipated, of the published minimum retail prices and the discount prices at which Westside would voluntarily sell the same brand name merchandise. The first Department investigator to visit the Westside store was Daniel H. Latendresse who, on November 14, 1963, represented to Claire that he was employed by a public relations firm, identified as Ben A. Cossart and Associates. She quoted him on his first visit a discount price for Jack Daniels liquor, but he made no purchase. The next day he returned to the store, reminded Claire of their previous conversation, and purchased several bot-

tles of Jack Daniels at a price per bottle below the scheduled minimum retail price for that brand. On November 18, 1963, Department investigator George H. Weiner, representing that he was employed by the same public relations firm, completed a second purchase of brand name liquor from Claire at a price per bottle in each instance lower than the scheduled minimum retail price. Finally, on November 22, 1963, a third Department investigator, Robert LaTouche, visited the Westside store in the company of Latendresse. Claire then offered to place their names on cards in the store's "special customer" file which would reflect the prices she quoted to them, so that in her absence other clerks would acknowledge the deal she had made with these customers. Thereafter, upon request, she went through the whole store with the investigators, quoting various prices for which she would sell them brand name merchandise below minimum retail prices. Finally, she prepared a written list for them which indicated in the left hand column the prices published by Patterson's and in the right hand column the lower prices at which she would sell them the same brands of liquor. On that date LaTouche made the third purchase of brand labelled merchandise below the filed minimum retail price, as alleged in the accusation.

Appellant asserts that the Board exceeded its jurisdiction in deciding the case upon an issue not raised at the hearing before the Department; that Rule 99(k) of the Department is a valid regulation and not in conflict with the controlling statute which it purports to implement; and that substantial evidence supports the Department's decision. These are meritorious contentions.

Neither at the hearing before the Office of Administrative Procedure hearing officer, nor in its appeal to the Board did Westside raise the issue of the validity of Rule 99(k), and at no time did it assert that this regulation exceeded the Department's authority or conflicted with the controlling statute (Bus. & Prof. Code, § 24755(b)). In fact, both the Department and the licensee assumed that the publication requirements of the statute had been complied with to establish effective minimum retail prices for the alcoholic beverage brands in question, and to afford legitimate price protection for the owners of such brand names. Since the issue of whether the publication was proper was not raised at the hearing before the Department, this issue was not properly before the Board. (*Harris v. Alcoholic Bev. Etc. Appeals Bd.*, 197 Cal.App.2d 182; *Wilke & Holzheiser, Inc. v. Dept. of Alcoholic Bev. Control,** ..... Cal.2d ....., ...)

The Department, moreover, in passing Rule 99(k) was well within its jurisdiction and was, in fact, fulfilling its constitutional obligation. "'. . . "It has long been uniformly held that there is no inherent right in a citizen to engage in the business of selling alcoholic beverages (citations) . . . The governing authority may, therefore, in the exercise of the police power for the protection of the public morals, health and safety, grant the privilege of selling alcoholic beverages upon such terms and conditions as it may determine. (Citations.)"'" (*Schuab's Inc. v. Dept. Alc. Bev. Control,* 153 Cal.App.2d 858, 869-870.) Under these circumstances, it is clearly established that the ". . . administrative interpretation of a statute made by an admin-

*Advance Report Citation: 65 A.C. 385, 413.

istrative agency charged with carrying out a particular statute will be accorded great respect by the courts and will be followed if not clearly erroneous." (*Cohon v. Dept. Alcoholic Bev. Control,* 218 Cal.App.2d 332, 339; see also *Rich v. State Board of Optometry,* 235 Cal.App.2d 591, 604.) The statute in the instant case provides, in part, that any person filing a minimum retail price schedule shall ". . . cause such schedule to be published in a manner which will result in each retailer affected by such schedule being advised of the contents of such schedule prior to the effective date thereof." (Bus. & Prof. Code, § 24755(b).) Rule 99(k) as promulgated by the Department provides that "The person filing minimum retail price schedules shall cause prices for all items on every original price schedule and for every change of price or new price on every replacement price schedule to be published in a trade journal of general circulation in the trading areas affected on or before the effective date thereof." (Title IV, Cal. Adm. Code, § 99(k).) It is difficult to see what manner of publication, short of personal service upon or mail directed to each licensee, would be more effective to advise each retailer of the contents of minimum price schedules than the publishing of such schedules in a journal circulated among those persons holding off-sale liquor licenses in the affected trading area.

Subsequent to the date upon which the briefs pertaining to this appeal were filed, it has been held that Rule 99(k) is a valid regulation. (*Reimel v. Alcoholic Bev. Etc. Appeals Bd.,*[b] ..... Cal.App.2d .....; pet. for hearing denied 1/17/68.) Based upon the reasons set forth in that opinion "We conclude that the Department's in-

[b]Advance Report Citations: 256 A.C.A. 188.

terpretation of the publication provisions of section 24755 is reasonable and certainly not 'clearly erroneous.' It should be followed by us. [Citation.]" (*Reimel v. Alcoholic Bev. Etc. Appeals Bd., supra,* p. 201.)

The question presented for review thus ultimately resolves itself into whether the Department's findings were supported by substantial evidence in the whole record. (*Harris v. Alcoholic Bev. Con. Appeals Bd.,* 212 Cal.App.2d 106, 112-113; *Cohon v. Dept. Alcoholic Bev. Control,* 218 Cal.App.2d 332, 337.) Our review of the record discloses ample evidence to prove that the alleged sales of liquor were made at the Westisde store at the prices specified and upon the dates mentioned in the accusation. In each instance, the owner of the brand name of the beverage sold by Claire Feldman had caused a "distilled spirits minimum retail price schedule" to be filed with the Department. Moreover, the parties stipulated at the original hearing that these prices were published in the November 1963 issue of the Patterson California Beverage Gazetteer, a monthly trade journal of general circulation among licensees in the trading area affected (Southern California); they further stipulated that Westside was a subscriber to that trade journal at the time of the charged violations.[1] In this manner the requirements of Rule 99(k)

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[1]"MR. STEVENSON: Second, Your Honor, the Department will offer a stipulation; that the Patterson California Beverage Gazetteer is a trade publication within the southern trading area in the State of California, within the liquor industry; that it was published in the month of November, 1963, and that all alcoholic beverages alleged in the Accusation and the minimum retail prices of each, were published in the November, 1963 issue; and further, that the respondent corporation was a subscriber to the Patterson Gazetteer.

"HEARING OFFICER: Pursuant to stipulation —

"MR. SNYDER: So stipulated. No objection."

were fulfilled, and it is clear that the licensee committed the violation charged of selling alcoholic beverages at prices below the effective *filed minimum* prices pertaining to the specific brand names. Therefore, substantial evidence supports the Department's findings that the violations occurred as charged in its accusation.

The judgment of the trial court is reversed with directions to the superior court to grant a writ of mandate commanding the Board to set aside its decision reversing the decision of the Department and to affirm such decision of the Department.

Fourt, *J.*

We concur:

Wood, *P. J.*

Lillie, *J.*

APPENDIX B.

Opinion of the Alcoholic Beverage Control Appeals Board of the State of California.

Before the Alcoholic Beverage Control Appeals Board of the State of California.

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD OF THE STATE OF CALIFORNIA.

In the Matter of the Accusation, against Westside Liquor Company, Inc. dba: Hazan's Wine and Spirits 8209 Santa Monica Boulevard, Los Angeles 45, California a Off-sale general license, Respondent, under the Alcoholic Beverage Control Act.

AB-2397 File No. 58273; Reg. No. 2859.

Time & Place of Hearing: July 21, 1965, at 10 a.m. 1525 South Broadway, Los Angeles, California.

For Department: Honorable Thomas Lynch, Attorney General, Lynn Henry Johnson, Deputy Attorney General.

For Appellant: Abraham Gorenfeld, Esq.

This appellant, Westside Liquor Company, Inc., doing business as Hazan's Wine and Sprits, was determined by the department have violated the fair trade provisions of the Alcoholic Control Act in that he sold certain alcoholic beverages at prices below the effective minimum retail prices for said beverages. The transactions involved cover the dates of November 15. 1963 (count I), November 18, 1963 (count II), and November 22, 1963 (count III). A penalty of revocation of the license on each of the three counts was imposed, separately and severally.

This board has held in several recent decisions (Appeal of Cohon and Sirbu, AB-2089; Appeal of Carella, AB-2181; Appeal of Carella and Maniscalco, AB-2185; and Appeal of Dorian and Matoff, AB-2258) that in order to establish a violation of the minimum price provisons of the Alcoholic Beverage Control Act it is necessary for the record to contain evidence of publication of the price schedules in compliance with the requirements of section 24755 of the Alcoholic Beverage Control Act. This section requires that the price schedules be published "in a manner which will result in each retailer affected by said schedule being advised of the contents of such schedule prior to the effective date thereof." As stated in our earlier decisions, proof of such fact is an essential part of the department's case because the offense here involved is not that of selling below the minimum retail prices filed with the department, but, rather, of selling "at any price less than the effective filed price." To establish the effective filed price of the beverage, it is necessary to prove publication of the price schedule in compliance with requirements of the statute.

The evidence of publication in this case consists of a stipulation set forth on pages 5 and 6 of the transcript. This stipulation provides as follows:

> "MR. STEVENSON: Second, Your Honor, the Department will offer a stipulation; that the Patterson California Beverage Gazetteer is a trade publication within the southern trading area in the State of California, within the liquor industry; that it was published in the month of November, 1963, and that all alcoholic beverages alleged in the Accusation and the minimum retail prices of

each, were published in the November, 1963 issue; and further, that the respondent corporation was a subscriber to the Patterson Gazetteer.

"HEARING OFFICER: Pursuant to stipulation—

"MR. SNYDER: So stipulated. No objection.

"MR. STEVENSON: I will offer this copy of Patterson's California Beverage Gazetteer as the Department's next in order."

In our opinion the foregoing stipulation does not constitute substantial evidence of publication in compliance with the terms of the statute. To the extent that rule 99(k) of the department is inconsistent with Business and Professions Code section 24755, it is invalid.

In view of the foregoing, the decision of the Department of Alcoholic Beverage Control in the present proceeding is hereby reversed.

Leverette D. House, Chairman
Alcoholic Beverage Control
Appeals Board

We Concur: Leon M. Cooper, Roger P. Garety, Sacramento, California, August 20, 1965.

APPENDIX C.

California Business and Professions Code.

§ *24755. Minimum retail price schedule; filing; amendments; loss leader sales; rejection of noncomplying schedules; exempt sales.* (a) No package of distilled spirits which bears the brand, trademark or name of the owner or person in control shall be sold at retail in this State for consumption off the license premises unless a minumum retail price for such package first shall have been filed with the department in accordance with the provisions of this section.

(b) A price for each of such packages shall be in a minimum retail price schedule setting forth with respect to each package the exact brand, trademark or name, capacity, and type of package, type of distilled spirits, age and proof, where stated on the label, and the minimum selling price at retail. The price for any such package may be filed separately and differently for the trading area of Southern California and the trading area of Northern California. The trading area of Southern California shall consist of the Counties of Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Bernardino, Imperial and San Diego. The Northern California trading area shall consist of the other counties of the State. No more than one person shall file a schedule for the same package for the same trading area. Any person filing such schedule shall cause such schedule to be published in a manner which will result in each retailer affected by such schedule being advised of the contents of such schedule prior to the effective date thereof.

(c) Such schedule shall be filed by (1) the owner of the brand, if licensed in the State; (2) any licensee, other than a retailer, selling the brand and who is authorized in writing by the brand owner to file such schedule if the brand owner is not licensed in this State; (3) a manufacturer or rectifier licensed in this State and who bottles under the brand owned by a retailer; or (4) any licensee with the approval of the department, if the owner of the brand does not file or is unable to file a schedule or authorize a licensee other than a retailer to file such schedule.

(d) Schedules filed pursuant to this section may be amended, changed, or modified by filing such amendments, change, or modification with the department on or before the 15th day of any month to take effect on the first day of the second succeeding calendar month; except that prices filed for a brand, size, or type not included in a schedule in effect at the time such brand, size, or type is filed, and prices filed to meet the price of a competitive brand, may be filed on or before the 15th day of any month to take effect on the first day of the following month. For the purpose of this section, a competitive brand shall mean any brand of the same type of distilled spirits having a filed selling price at retail within one dollar ($1) per gallon of the brand for which a competitive price is filed.

No retailer shall sell any package of distilled spirits as a loss leader. "Loss leader," as used in this section, means a sale below cost as such cost is defined in Sections 17026 to 17029, inclusive, of this code, except that a sale below cost made under provisions of

Section 17050 of this code shall not be deemed a loss leader sale.

The department shall reject any price schedule which does not comply with this subdivision.

(e) No offsale licensee shall sell any package of distilled spirits at any price less than the effective filed price of such package unless written permission is granted by the department, for good cause shown and for reasons not inconsistent with this division.

(f) The provisions of this section shall not apply to:

(1) A closeout sale made in good faith and approved by the department when the following conditions exist: (i) the stock of distilled spirits sought to be closed out has been in this State, either in the possession of the vendor who sold it to the retailer or in the possession of the retailer who seeks to close out the brand, for a period of not less than six months; (ii) the stock of distilled spirits to be closed out was not brought into this State for the purpose of offering it, or any part of it, at a closeout sale; (iii) at least 10 days prior to filing a request with the department for approval to sell the stock at a closeout sale, the retailer had offered to return the distilled spirits, at his original invoice cost, to both the vendors from whom he purchased them or to his successor and to the licensee who filed the minimum price schedule under the provisions of this section; (iv) such offer of return was not accepted.

At the place of any closeout sale and upon any package of distilled spirits to be sold and in any advertisement in connection therewith, public notice shall be

given of the sale as a closeout sale. Following the conclusion of a closeout sale, the retailer who conducted such sale shall not sell the same brands of distilled spirits for a period of at least one year.

(2) Sales made with the approval of the department when the distilled spirits or the package is damaged or deteriorated in quality and notice of this fact is given to the public at the place of any such sale and upon the package offered for sale and in any advertisement in connection therewith.

(3) Sales made by any officer acting under the orders of any court.

(g) A minimum retail price schedule containing a minimum retail price for each package of any brand of beer may be filed under the provisions of this chapter by the person in control of such brand and when so filed, the provisions of this chapter and any rules adopted by the department for the administration of the provisions of this chapter shall apply to the sale of packages of such brand of beer. (Added Stats. 1961, c. 635, p. 1835, § 4.)

APPENDIX D.

California Administrative Code.

99. *Minimum Retail Price Schedules. (a) Posting of Minimum Retail Price Required.* No off-sale licensee shall sell any package of distilled spirits at a price less than the effective minimum retail price of such package filed with the department, unless written permission is granted by the department for good cause shown and for reasons not inconsistent with the law.

The licensed owner or person in control of a brand, trade mark or name appearing on a package of distilled spirits which is to be sold for consumption off the licensed premises in California must file a "Distilled Spirits Minimum Retail Price Schedule" containing the minimum bottle and case prices to consumers for every distilled spirits item carrying that brand, trade mark or name.

(b) *Brand Defined.* The word "brand" as used herein means "brand, trade mark, label or name", and if an additional secondary name or a different form of label is used, each will be considered to be a separate brand.

(c) *Distilled Spirits Item Defined.* "Distilled spirits item" as used herein means a distilled spirits package that differs from all other distilled spirits in addition to its brand, as defined in (b) above, in any one of the following categories: (1) Type of distilled spirits including type of bottling (in bond or not in bond), and type of blend (blend of straight whiskeys or spirits blend); (2) Percentage of Straight Whiskey; (3) Age, if shown on the label; (4) Proof; (5) Origin (do-

mestic or imported); (6) Bottle size; and (7) Number of bottles in a case.

When a container other than the normal container for a brand is used as in the case of a decanter, higher minimum retail prices must be established to reflect any additional cost involved.

(d) *Distilled Spirits Sold "On-Sale" Only.* If a particular item is labeled to indicate that it is intended for sale to and for dispensing by on-sale retailers only (such as "bar package", "for on-sale only"), the minimum retail price thereof need not be filed. However, if any sale for off-sale consumption of such item should be made, the licensee making such sale will have violated the law.

(e) *Who Files Minimum Retail Price Schedules.*

Only one licensee is permitted to file a "minimum retail price schedule" containing the price for the same item for the same trading area. However, different prices may be filed in the Northern and Southern trading areas.

This means that (1) the owner of the brand or the corporate subsidiary who exclusively markets the products thereof and so is the controller of the brand, if licensed in California, if other than a retailer, must file; or (2) if the owner of the brand is not licensed in California and has no corporate subsidiary marketing in California, any licensee, other than a retailer authorized by him in writing must file, such as a wholesaler or importer authorized by an out-of-State or out-of-country brand owner; or (3) if the brand is owned by a retailer, the California-licensed manufacturer or rectifier who bottles an item of distilled spirits under

that brand must file for the item; or (4) if none of the three situations above apply and the brand is owned by a retailer, the importing wholesaler must file. If none of the three situations above apply and the brand is not owned by a retailer, then any licensee, other than a retailer, who secures the approval of the department must file.

(f) *Price Schedule Sheets to be Filed.* Four copies of a "Distilled Spirits Minimum Retail Price Schedule" on a form prescribed by the department must be filed with the department, 1215 O Street, P.O. Box 1139, Sacramento 5, and one copy retained by the licensee in his office for inspection. The "Minimum Retail Price Schedule" may be printed, typewritten or otherwise duplicated on 16 or 20 pound paper on a format and size prescribed by the department and must show the form number "ABC 705" in the lower left-hand corner of the face of the sheet. All information called for on the form sheet must be supplied. A separate set of "Price Schedules" must be made originally, or if added later as a new item, for every different type of distilled spirits, and if that type has different categories as defined in (2), (3), (4) and (5) in the definition of "Distilled Spirits Item" in (c) above, a separate set must be made for each such difference. Each schedule must contain every bottle size (6) and every size of case (7) in which that brand, type, etc., will be sold. When a new bottle size or new size case is to be sold, or the price of any size of bottle or size of case already on file is to be changed either independently or to meet the price of a competitive brand, new sets of price schedules, in quadruplicate, must be filed to replace those on file and must also include all the information

that was on the superseded schedule. Both minimum retail bottle price and minimum retail case prices covering all case sizes must be shown on the price schedules for each size and type.

(g) *Filing Dates; New Item.* A set of original schedules for new items must be filed on or before the close of business of the fifteenth day of any calendar month to take effect on the first day of the following month, provided, however, the price of such new item is published on or before the aforesaid effective date.

(h) *Change of Minimum Retail Price on File.* A set of replacement schedules must be filed on or before the close of business of the fifteenth day of any calendar month, to be effective on the first day of the second succeeding month; provided, however, the changed price is published on or before the aforesaid effective date.

(i) *Change in Price of an Item to Meet Price of Competitive Brand.* A set of replacement schedules for competitive items must be filed on or before the close of business of the fifteenth day of any calendar month, to be effective on the first day of the following month; provided, however, such price change is published on or before the aforesaid effective date.

A competitive brand is a brand of the same type of distilled spirits as the brand for which a change in price is being filed and for which at the time of filing there is on file a "Price Schedule" sheet filed by some other licensee showing a minimum retail price for the competitive brand item within one dollar per gallon of the price being charged, and proportionately for smaller sizes. The same type of distilled spirits means one identical as to categories (1) and (5) in the definition

of "Distilled Spirits Item" in (c) above; the price change involved must apply to the identical item indicated in categories (6) and (7).

If a price is filed to meet the price of a competitive brand, the price so filed shall be the same as the price which is being met.

(j) *Filing Date Exception.* Whenever the fifteenth day of any month falls on Saturday, Sunday or a legal holiday, the price schedules required to be filed may be filed not later than the close of business the next business day.

(k) *Publication.* The person filing minimum retail price schedules shall cause prices for all items on every original price schedule and of every change of price or new price on every replacement price schedule to be published in a trade journal of general circulation in the trading areas affected on or before the effective date thereof. Publication of minimum retail prices for a brand sold only to a single retailer may be accomplished by the mailing of such price schedules by the importer, manufacturer, manufacturer's agent, rectifier or wholesaler, and any amendments thereto, to the retail licensee affected thereby. The schedule shall be deposited in the United States Post Office on or before the date or dates required for publication of price schedules as prescribed above in this paragraph, and the mailing shall be complete at the time of such deposit. A record of each such notification should be retained in the file of the posting licensee for three years.

(l) *Deliveries.* No manufacturer, wholesaler or rectifier shall make deliveries of any particular item of distilled spirits to any off-sale retail licensee before a "Price Schedule" with that item thereon has been filed with the department; thereafter he may make deliveries thereof within such time before the price becomes effective as would give the retailer reasonable time to get the item ready for sale upon the price becoming effective.

(m) *Withdrawal of Item from Price Schedule.* No item may be deleted from a replacement "Price Schedule" once it has been filed on an original schedule until the department authorizes such deletion when the department makes a finding that the item is carried in wholesale and off-sale retail inventories in only very small quantities.

(n) *Transfer of Price Filing Obligation.* When, for any reason, price filing responsibility for any item is transferred from one licensee to another, the price schedules of the licensee then on file will continue in effect until replaced by an effective new filing by the successor which will be considered to be a schedule already on file.

(o) *Tax Increase or Government Order.* Pursuant to an order issued by the department, any price schedule may be changed at any time to reflect changes in federal or state excise taxes on distilled spirits or to comply with the requirements of any order issued by the federal government and relating to price control.

(p) *Sales as Loss Leaders Prohibited.* All distilled spirits minimum retail prices filed under the provisions of Section 24755 shall comply with all the provisions of said section including the provisions of subsection (d) which prohibits the sale of distilled spirits as a loss leader. Any licensee filing distilled spirits minimum retail prices below the purchasing retailer's cost of acquisition plus said retailer's cost of doing business as referred to in said subsection shall produce evidence to show that such price was filed to meet the legal price of a competitor selling the same article or product.

NOTE: Authority cited for amendment filed 10-2-56; Sections 24757 and 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Issuing agency: Department of Alcoholic Beverage Control. Additional authority cited: Sections 24749, 24750, 24751, 24752, 24755 and 25752, Business and Professions Code.

History: 1. Repealer and new section filed 9-12-61; designated effective 10-15-61 (Register 61, No. 18). For prior history, see Register 60, No. 16.